

REMARKS/ARGUMENTS

In the office action dated December 22, 2009, claims 1, 4-6, 8 and 17-21 were rejected under 35 U.S.C. 112, first paragraph, claims 1 and 20 were rejected under 35 U.S.C. 102(b) as being anticipated by Sandham, and claims 1, 4, 20 and 21 were rejected under 35 U.S.C. 103(a) as unpatentable over Sandham and Gardenier et al. In this amendment, claims 6, 8, and 17 – 21 have been cancelled. New claims 22 – 25 have been added. Claims 12 – 14 were previously withdrawn from consideration. Reconsideration of the claims based on the amendments and following remarks is respectfully requested.

Amendments to the Specification

In response to the request on page 2, second full paragraph of the office action, the amendments made to the specification in response to the last office action are resubmitted herewith, with corrected references to correspond to the 7 page document filed on June 20, 2005. With respect to the language of claim 20, claim 20 has been cancelled. No corrections are therefore required.

In response to paragraph 3 of the Office Action, the text at page 4, line 10 has been corrected to read “4” instead of “3”.

Amendments to the Claims

Claim 1 has been amended to add the new limitation that the left and right side-upper body water outlet fittings are positioned to in use direct water onto a bather sitting in a bath and leaning back against the wall of the bath “between said left and right side-upper body water outlet fittings”. This is as shown in Figure 1 of the specification (PCT application; Terri if you think that the examiner may next object that these words “between said left and right side fittings” are not explicitly referred to in the text of the specification you may wish to in anticipation propose an amendment to add them to the specification. Page 4 about line 25 of the PCT specification would

be a good place. The other additions to the top part of claim 1 are really just a rearrangement of the order of limitations that were already there e.g. leaning back against the wall of the bath, the fittings are behind the bather etc).

Claim 1 has been amended to add the new limitation that “said one end of each fitting being closer to the other of said left and right side-upper body water outlet fittings than said opposite end of said each fitting, each fitting at least in one pivotal position of the fitting in which the angle between water flow from each fitting relative to one another is greatest, not extending beyond the bath wall or a rim section around the top of the bath or both into the interior of the bath”.

Referring to Figures 3A and 3B the fittings 4 can pivot in the directions of arrows P. In Figure 3A the fittings 4 are shown against the bath wall or rim section around the top of the bath wall and thus in Figure 3A the fittings 4 are in the ‘one pivotal position’ of claim 1. The fittings are shown not extending beyond the bath wall into the interior of the bath, in which position the fittings do not impact on the comfort of a bather leaning against the bath wall between the fittings. In this pivotal position the angle between the water flow from the fittings is the greatest. In Figure 3B the fittings have been pivoted away from this position towards one another. This reduces the angle between water flow from each fitting relative to one another.

CFR 1.75(d)(1) Objection

The examiner objected that proper antecedent basis for the ‘integrates’ feature of claim 1 could not be found in the specification. Claim 1 has been amended to remove ‘integrates’.

112 Rejections

Claims 1, 4-6, 8 and 17-21 were rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification originally filed.

The examiner stated that the words in claim 1 as amended ‘the fitting is pivotally mounted about a generally vertical axis’ is not found in the originally filed disclosure and is therefore considered to be new matter. At the top of page 5 the specification states that the fittings ‘can pivot in direction of arrows P’. Looking at Figure 3A which is a close up view of part of the bath of Figures 1 and 2 and looking at the same time at Figures 1 and 2, it is clear that the axis of pivotal movement P of the fittings 4 is ‘a generally vertical axis’.

The examiner also stated that the words in amended claim 1 ‘said fittings being pivotally moveable away from the bath wall and/or rim section and towards one another’ is not found in the originally filed disclosure and is therefore considered to be new matter. The specification in the top two paragraphs of page 5 makes clear that each fitting can pivot in the direction of arrows P. When the fittings 4 are moved from the position shown in Figure 3A, each in the direction of arrow P, from the current position shown in the drawing, they are then moved ‘away from the bath wall and/or rim section and towards one another’.

There is no requirement that the exact words of the claim be in the written description. All that is required is that the claims reasonably convey the subject matter. A drawing may itself constitute written description, or supplement the information in the written description. Here the Applicant respectfully submits that the specification and drawings support the language of the claims, and respectfully requests that the rejection under 35 U.S.C Section 112 first paragraph be withdrawn.

Enablement Rejection under 35 U.S.C. Section 112, first paragraph

Claims 1, 4 – 6, 8, and 17 – 21 have been rejected under 35 U.S.C. § 112 paragraph 1.

The Office Action asserts that the specification fails to enable a fitting pivotally mounted for water supply, but rather only enables a fitting pivotally mounted in a collar for water supply. This rejection is respectfully traversed as follows.

Before rejecting a claim as failing to comply with the enablement requirement, the Office must determine whether undue experimentation is needed (See MPEP 2164.04 and 2164.08). To determine whether the necessary experimentation is undue, the Office must at least rely on the Wands factors laid out in MPEP § 2164.01(a). In addition, the Office's analysis must consider all the evidence related to each of the Wands factors, and any conclusion of nonenablement must be based on the evidence as a whole (See MPEP § 2164.01(a)).

In this case, the Office Action failed to address the Wands factors, and also failed to consider all the evidence related to each of the Wands factors. Therefore, the allegations that the rejected claims fail to satisfy the enablement requirement are insufficient to establish a lack of enablement, and the Applicant respectfully requests that the rejection be withdrawn for this reason.

Further, "in inventions which pertain to an art where the results are predictable, e.g. mechanical as opposed to chemical arts, a broad claim can be enabled by disclosure of a single embodiment ... and is not invalid for lack of enablement" (See Spectra-Physics Inc. v. Coherent, Inc., 827 F.2d 1524 (Fed. Cir., 1987). The Applicant in this case is therefore not limited to the embodiment described in the specification, barring some evidence that one of ordinary skill in the art would not be enabled to construct variations. The Applicant therefore respectfully requests that the rejection be withdrawn. If the rejection on this basis is upheld, the Applicant respectfully requests clarification and specific support for the assertion that the invention as claimed is not enabled.

Paragraph 7 objection

The examiner rejected claim 1 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The examiner said that 'Claim 1 is unclear as to the relationship between

the “another end” on line 21, and the “opposite end” on line 16 thereof’. The rejection is now answered by the amendment of ‘another end’ to ‘said opposite end’ in claim 1.

102 rejections

Claim 1 was rejected under 35 U.S.C. 102(b) as being anticipated by Sandham.

Reconsideration in view of the amendments and the following remarks is respectfully requested.

Sandham does not disclose as now recited in amended claim 1 ‘each fitting comprising a generally vertically extending hollow mounting neck’. What the examiner has described as the mounting necks of Sandham namely elements 17, 18 are approximately horizontally extending not generally vertically extending.

Sandham also does not disclose as now recited in amended claim 1 ‘said fittings being pivotally moveable about said generally vertically extending, mounting neck away from the bath and/or rim section towards one another’, because in Sandham what the examiner describes as the mounting necks namely elements 17, 18 are approximately horizontally extending not generally vertically extending.

Sandham also does not disclose as now recited in amended claim 1 ‘left and right side water outlet fittings arranged to in use direct onto a bather sitting in a bath and leaning back against the wall of the bath, a flow of water onto at least one of the shoulders and the neck of the bather, from on either side of the bather behind the bather, said left and right side upper body water outlet fittings comprising two spaced upper body water outlets one positioned to direct a water flow onto the left shoulder or neck or both of the bather and the other positioned to direct a water flow onto the right shoulder or neck or both of the bather.’. Sandham does not disclose what part of the body of a bather in the bath the spraying disks 19 of Sandham are intended to spray water towards but the spraying disks 19 are shown positioned about a third of the way along the length of the bath wall from the inclined and unobstructed end of the bath wall against which a

bather would lean. The spray nozzles 19 of Sandham are not positioned to direct a flow of water onto the shoulders and the neck of the bather from behind the bather, the bather sitting in the bath between said left and right side-upper body water outlet fittings and leaning back against wall of the bath.

103 Rejections

The examiner rejected claim 1 and 4 under 35 U.S.C. 103(a) as patentable over Sandham and Gardenier et al.

The examiner says in relation to claim 1 that:

‘The Gardenier et al reference teaches positioning an outlet fitting to direct water to the shoulder blades and along the back of a user (Fig. 11)’.

However moving the spraying disks 19 of Sandham to the position of the outlets of Gardenier would not result in the bath of claim 1 at least because:

- Sandham does not disclose as now recited in claim 1 ‘each fitting comprising a generally vertically extending hollow mounting neck’.

Sandham elements 17, 18 are approximately horizontally extending not generally vertically extending.

- Sandham does not disclose as now recited in amended claim 1 ‘said fittings being pivotally moveable about said generally vertically extending, mounting neck away from the bath and/or rim section towards one another’.

Sandham elements 17, 18 are approximately horizontally extending not generally vertically extending.

- Sandham does not disclose as now recited in amended claim 1 ‘left and right side water outlet fittings arranged to in use direct onto a bather sitting in a bath and leaning back against the wall of the bath, a flow of water onto

at least one of the shoulders and the neck of the bather, from on either side of the bather behind the bather, said left and right side upper body water outlet fittings comprising two spaced upper body water outlets one positioned to direct a water flow onto the left shoulder or neck or both of the bather and the other positioned to direct a water flow onto the right shoulder or neck or both of the bather,’. When a bather leans against the inclined end wall of the bath of Sandham with the spray nozzles 19 on either side of the bather, the spray nozzles 19 will not direct water onto the bather from behind.

Also claim 1 requires, and the subject application discloses, fittings which each comprise a hollow body elongate in a generally horizontal axis, and each comprise a generally vertical hollow mounting neck by which the fitting is pivotally mounted about a generally vertical axis. Referring to Figures 3A and 3B the fittings 4 can pivot in the directions of arrows P. In Figure 3A the fittings 4 are shown against the bath wall or rim section around the top of the bath wall and thus in Figure 3A the fittings 4 are in the ‘one pivotal position’ of claim 1. The fittings are shown not extending beyond the bath wall into the interior of the bath, in which position the fittings do not impact on the comfort of a bather leaning against the bath wall between the fittings. In this pivotal position the angle between the water flow from the fittings is the greatest. In Figure 3B the fittings have been pivoted away from this position towards one another. This reduces the angle between water flow from each fitting relative to one another.

The spraying disks of Sandham impinge into the interior of the bath in all pivotal positions of the spraying disks. In fact the spraying disks are mounted onto the sides of the bath wall such that in all positions of the spraying disk they impinge greatly into the interior of the bath. If the spraying disks of Sandham were moved from on either side of the bath about a third of the way

along the bath, to the position of the fittings as defined in applicant's claims now amended, to direct flow of water onto the shoulders and/or neck of a bather from on either side of the bather behind the bather, the spraying disks 19 of Sandham would impinge greatly into the comfort of the bather. The spraying disks of Sandham even if moved to this position would not 'at least in one pivotal position of the fitting ... not extend(ing) beyond the bath wall or a rim section around the top of the bath wall or both into the interior of the bath ...'.

Gardenier discloses outlets which release water from beneath a pillow. Gardenier provides only for changing the angle of water flow along a horizontal axis. Gardenier does not allow or suggest adjustment of the fittings or the water flow angle along a vertical axis. The nozzles therefore cannot be adjusted to reduce the angle between water flow from each fitting relative to one another, as recited in applicant's claims.

Fundamentally, neither Sandham nor Gardenier disclose applicant's concept as claimed of elongate fittings, elongate in a horizontal axis, mounted for pivotal movement about a vertical axis at or towards two adjacent ends of each fitting which integrate into the top of the bath wall or rim at least in one pivotal position and can be moved away from this pivotal position towards each other to reduce the angle between water flow from each fitting relative to one another, from behind the bather on either side of the bather onto the shoulders or neck of a bather sitting in the bath and leaning against the wall of the bath.

Conclusion

In view of the foregoing amendments and remarks, the claims are believed to be in condition for allowance, and a notice of allowance for these claims is respectfully requested.

A three month extension fee is necessary for entry of this response. The Commissioner is hereby authorized to charge \$1,110.00 and any other fees under 37 CFR § 1.17 that may be due on this application to Deposit Account 17-0055. The Commissioner is also authorized to treat this

amendment and any future reply in this matter requiring a petition for an extension of time as incorporating a petition for extension of time for the appropriate length of time as provided by 37 CFR § 136(a)(3).

Respectfully submitted,
John Hatrick-Smith, *et al.*

Dated June 21, 2010

By: /Terri S. Flynn/

Terri S. Flynn
Quarles & Brady LLP
Reg. No. 41,756
Attorney for Applicant
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497
(414) 277-5229